THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.11248 of 2006

Dated 19.10.2006

Between:
Badireddy Adinarayana. …. PETITIONER

versus

The Chief Executive Officer, Vizianagaram
Zilla Parishad Office, Vizianagaram
and four others. …. RESPONDENTS

WRIT PETITION NO.11248 of 2006

ORDER:

WVMP No.1757 of 2006 is coming up for hearing today. The relief prayed for therein is to vacate the interim order granted in Writ Petition No.11248 of 2006, dated 20.6.2006.

2. Heard both the learned counsel.

3. The Writ Petition is filed for Writ of Mandamus declaring the action of the respondent authorities in laying road on the southern portion of the petitioner's wet land of an extent of Ac. 1.43 cents comprising of 3 plots in S.Nos.51-12, 53-1 and 53-13 situate in Mamidipalli village, Jammi Mandal, Vizianagaram District, without issuing any notice or acquiring the land and without following the due process of law as arbitrary, illegal, null and void and is against the principles of natural justice and norms of the public policy and violative of Article 300-A of the Constitution of India and pass such other suitable orders.

4. It is stated that the writ petitioner and one Badi Somu Naidu are the owners of the wet land of an extent of Ac. 1.43 cents comprising of 3 plots in S.Nos.51-12, 53-1 and 53-13 situate in Mamidipalli village, Jammi Mandal, Vizianagaram District and abutting to their land, there is a bund raised, which is within their lands, and they are in occupation

of the said land since their fore-fathers, who have purchased the same in the year 1948, with peaceful possession and enjoyment of the said land. It is also stated that while the matter stood thus, the respondents and other persons are interfering with the petitioner's peaceful possession and enjoyment and are trying to lay a road on the bund raised by them in their land on the southern portion of the land. Thereupon, the petitioner along with B.Somu Naidu filed a suit OS.No.184 of 1992 seeking injunction restraining the respondents and others from ever interfering with the petitioner's peaceful possession and the said suit was disposed of on 6.8.1999 and the same had become final as no appeal had been preferred by the 3rd and 4th respondents or by the private parties. It is also further stated that the respondent authorities in order to lay a road on the bund raised by the petitioner, taking all steps to lay the road and the funds are sanctioned by the 1st and 2nd respondents without acquiring the land nor issuing any notice. In fact the claim of the respondent authorities in the suit is that the land is a Government land and the trial Court had clearly held that there is no encroachment by them and as such they are in occupation and now the respondent-authorities unauthorisedly got sanctioned the funds for laying the road on the bund, which is in the petitioner's land, which is arbitrary, illegal, null and void and is against the principles of natural justice. It is also further stated that in fact if any road has to be laid in any private land, the Government has to acquire the land under the Land Acquisition Act and has to pay the compensation and then to lay the road, but in the instant case the action of the respondent-authorities in high-handedly laying the road is unsustainable and without any right, and the action of the respondent-authorities is violative of Article 300-A of the Constitution of India and the norms of the public policy.

4. In the counter affidavit filed by the 2nd respondent it was stated in

paragraph 3 that there was a Katcha road existing over the bund since time immemorial. Virtually the lands abutting the bund and including the bund belongs to late Vijayanagaram Raja and a passage was existing over the bund. In the year 2001 at the request of the villagers and the ryots of that particular area, an amount of Rs.1,00,000/- was allocated for formation of gravel road and accordingly work order was given to the Village Works Committee and the road was laid by the Works Committee over the existing road. Final payments were also made to the Works Committee long back. At the time of laying the road no objections were received from anybody including the writ petitioner. Now, after a lapse of 4 years, the writ petitioner with an ulterior motive filed the present Writ Petition with false allegations. Further, a specific stand was taken that as seen from the revenue records the petitioner had no properties in the village Mamidipalli including the road portion and the alleged suit in OS.No.184 of 1992 was filed against some third parties and any of the respondents in the present Writ Petition were not parties to the said proceedings and therefore it is not binding on the respondents, if any decree is existing as alleged. It is also further specifically stated in paragraph 5 of the counter affidavit that the petitioner had no properties in the village Mamidipalli and his land was not occupied for laying a road as alleged. It is further stated that in the absence of taking over the land of the petitioner, the question of acquiring the lands does not arise. Further, the road was laid way back in the year 2001 over the existing Katcha road which is existing on the bund from time immemorial. The petitioner purposefully filed this Writ Petition stating that a road is going to be laid, which is false and incorrect. It is also stated that absolutely there is no objection from the pattadars of the villagers who are having lands on both sides of the road laid. It is stated that the Writ Petition is misconceived and is liable to be dismissed with exemplary costs. It is further stated that by virtue of the status quo orders granted

by this Court, the writ petitioner is provoking some of the villagers who are having lands on both sides of the existing road to destroy the road.

5. In the light of the stand taken in the counter affidavit specifically averring that the road was laid even in the year 2001, this Court is of the considered opinion that the writ Court cannot go into these factual controversies between the parties and hence, the petitioner is at liberty to pursue the other remedies open to him in law. Except making the above observation, nothing else can be done at this stage.

6. With the above observation, the Writ Petition is dismissed. No costs.

19.10.2006

SSR